IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18/06/2003

Coram

The Honourable Mr.Justice A.S.VENKATACHALAMOORTHY
and
The Honourable Mrs.Justice R.BANUMATHI

A.S.No.404 of 1989

Tamalarasi ... Appellant

-Vs-

1. S.Kumarasamy Gounder
2. Veerappan
3. V.Kumarasamy Gounder
4. Chellamuthu
5. Duraisamy
6. Ramasamy Gounder
7. Periasamy
8. Somasundaram ... Respondents

This appeal is filed against the decree and judgment of the
learned Subordinate Judge, Dharapuram in O.S.11 of 1986 dated 29.11.1988.

!For Appellant : Mr. N.Manoharan

^For Respondents : M/s.M.V.Krishnan
For RR 1,2, 5 to 8 R.Gopinath

:J U D G M E N T

A.S.VENKATACHALAMOORTHY, J.
Plaintiff in O.S.11 of 1986 on the file of Sub Court,
Dharapuram is the appellant herein.

2. The plaintiff filed the said suit against the defendants
praying the Court to pass a decree for division of suit properties into four
equal shares with reference to good and bad soil and allot one such share to
the plaintiff and to put her in possession of the same contending as follows.
One Palanisamy Gounder, who admittedly entitled for < share in
the suit property, sold the same on 8.4.1974 to one Veerammal. After the
purchase the said Veerammal and other sharers were enjoying definite portions
by way of convenient enjoyment without any partition amongst themselves by
metes and bounds. It is the further case of the plaintiff that she purchased

1/4 share of Veerammal under a sale deed dated 29.10.1985 and since then she has been enjoying that portion of land which Veerammal was enjoying. According to the plaintiff, since the defendants refused to heed to the request to partition the properties by metes and bounds, the present suit has been filed.

3. The second defendant filed a written statement inter alia denying various claims made by the plaintiff. The defendant disputed the claim of the plaintiff that she is entitled to 1/4 share in the plaint schedule properties. Further case of the second defendant is that even assuming that the plaintiff is entitled for 1/4 share as claimed by her, she would not be entitled for possession and that is because the second defendant took the property on lease under a document dated 23.3.1973 for a period of three years from the predecessor-intitle of the plaintiff viz., Palanisamy Gounder and even after expiry of the said term, he continued to be in

possession. A specific claim is made in the written statement that he is entitled to the protection under the Tamil Nadu Cultivating Tenants Protection Act, 1955 (hereinafter referred to as 'the Act').

4. At the trial, both the parties let in oral and documentary evidence. After considering the materials available on record, the trial Court came to the conclusion that the plaintiff is entitled to 1/4 share in the plaint schedule properties and that her share has to be demarcated. However, the Court held that she would not be entitled to get possession of the same since the second defendant is the cultivating tenant of the plaintiff's share of the property. Being aggrieved by that part of the finding of the trial Court, the present appeal has been filed by the plaintiff.

5. The learned counsel for the appellant contended that the second defendant in his written statement has not pleaded that he is cultivating the suit property with reference to the share of the plaintiff and even in his evidence he has not deposed that he is entitled to the protection under the Act. According to the learned Counsel, the trial Court ought to have granted a decree for possession as well.

6. On the other hand, learned counsel for the respondent would contend that the fact that Palanisamy Gounder leased out the property to the second defendant in the year 1973 has not been disputed and that further since he continues to be in possession even after expiry of lease period, he satisfies the conditions contemplated in the Act to claim the status of a cultivating tenant. According to him, payment of kist and electricity charges would further prove that he has been actually cultivating the plaintiff's share of the suit property.

7. It has to be noted that in the appeal, the plaintiff has not claimed that she is in possession of a portion of the suit property by way of convenient enjoyment. That being so, on the basis of the claims made by the respective parties, if this Court comes to the conclusion that the second defendant is the Cultivating Tenant, then the Judgment and Decree of the trial Court has to be sustained. But on the other hand, if this Court arrives at a

finding that the second defendant is not the cultivating tenant as contemplated under the Act, then the plaintiff will be entitled for a decree for possession in respect of her 1/4 share.

8. Firstly, this Court has to take up the exercise of examining the definition of 'Cultivating Tenant' as found in the Tamil Nadu Cultivating tenants Protection Act, 1955. While doing so, this Court has to bear in mind certain legal principles as laid down by the Supreme Court of India in various decisions, which we enumerate as under.

(a) The Court must see the legislative intent and the underlying policy of the statute and the object sought to be achieved.
(b) Any interpretation should be as far as possible consonant with justice and reason.
(c) When the words in the statutes are not ambiguous, the Court has to go by the literal meaning of the words.
(d) Yet another golden canons of interpretation is that the legislature always avoids surplusage and attributes a definite meaning to each of the words mentioned in the statute.
(Refer: (2000) 4 SCC 640 (State of Bihar v. Bal Mukund Sah); (2001) 5 SCC 133 (Atul Castings Ltd. v. Bawa Gurvachan Singh); (2001) 5 SCC 407 (Manohar Lal v. Vinesh Anand); (2001) 8 SCC 61 (Dental Council of India v. Hari Prakash); 2001 SCC (Crl) 760 (Uday Mohanlal Acharya v. State of Maharashtra)

9. The preamble of the Act reads as under,
"Whereas it is necessary to protect cultivating tenants in certain areas in the State of Tamil Nadu from unjust eviction."

10. In AIR 1982 SC 137 (Chinnamarkathian v. Ayyavoo), the question arose was as to whether the Revenue Divisional Officer while considering the Landlord's complaint of arrears of rent and request for an order of eviction on that ground, can pass an order granting time to pay the arrears within a stipulated time and further in the same order holding that in case of failure on the part of the tenant, there will be an order of eviction. The Court answered in the negative and in the Judgment, the Court referred to the object behind enacting the Act. After referring to the preamble, the Court observed as under,
"It was a beneficent legislation for granting security of tenure to cultivating tenants of agricultural lands. It is a well-settled canon of construction that in construing the provisions of such enactments the Court should adopt that construction which advances, fulfils and furthers the object of the Act rather than the one which would defeat the same and render the protection illusory."
(emphasis supplied)
Hence, it is abundantly clear that the Act is meant to protect only a cultivating tenant.

11. Now, the question is who is the Cultivating Tenant.
Section 2 (aa) reads as under,
"Sec.2(aa) "Cultivating tenant"-
(i) means a person who contributes his own physical labour or that of any

member of his family in the cultivation of any land belonging to another, under a tenancy agreement, express or implied; and
(ii) includes-
(a) any such person who continues in possession of the land after the determination of the tenancy agreement;"
(emphasis supplied)

Admittedly in this case, the tenancy agreement entered into between second defendant and Palanisamy Gounder was for a period of three years, i.e., it came to an end by 1976. While Section 2(aa)(i) deals with a case, where the tenancy agreement is in force, clause (ii)(a) deals with the case where a person is in possession after the determination of tenancy agreement. The present case falls under the second category. As already stated, while the appellant would contend that second defendant's mere continuing in possession is not sufficient to claim the status of a cultivating tenant and that he should further satisfy the Court that he contributes his own physical labour or that of any member of his family in cultivation of the land, the claim of the respondent is that mere possession after expiry of the lease period is sufficient. Of course, the respondent would further contend that even assuming it is not sufficient, the production of the documents such as electricity bills evidencing payment of electricity charges and payment of kist would show that he was actually cultivating the land.
12. We would have readily accepted the submission of the counsel for the respondent that mere possession by the respondent would be sufficient to claim the status of a Cultivating tenant, but for the word 'such' occurring in Section 2(aa)(ii)(a). The question would arise as to whether that word can be ignored. As already pointed out by us earlier, no word used by the legislature can be ignored unless the Court is driven to such a conclusion having regard to the scheme, object and other relevant circumstances of the statutory provision.

13. In fact, a learned single Judge of this Court in AIR 1976 Madras 55 (Bright Bros.(P) Ltd., v. J.K.Sayani) rightly pointed out as under,
"It is one of the cardinal principles of interpretation that no word used by the Legislature in a statute should be ignored or should be held to be meaningless, superfluous or otiose, unless the Court is driven to such a conclusion, having regard to the scheme, object, and other relevant circumstances of the statutory provision."

14. It is now relevant to refer to a ruling of the Supreme Court reported in (2003) 3 SCC 309 (Mithilesh Singh v. Union of India) where the Supreme Court pointed out that the intention of the legislature has primarily to be gathered from the language used and rejection of words as meaningless has to be avoided. The Supreme Court observed as under,
"The intention of the legislature is primarily to be gathered from the language used, and as a consequence a construction which results in rejection of words as meaningless has to be avoided. It is not a sound principle of construction to brush aside word(s) in a statute as being inapposite surplusage; if they can have appropriate application in circumstances conceivably within the contemplation of the statute. In the interpretation of statute, the Court always presume that the legislature inserted every part

thereof for a purpose and the legislative intention is that every part of the statute should have effect. The legislature is deemed not to waste its words or to say anything in vain. The authorities were, therefore, justified in holding that he was guilty of the offence of absence from duty without proper intimation."

No reason has been pointed out by the Counsel for the respondent for this Court to come to the conclusion that the word 'such' (referred supra) has to be ignored. In fact, no such argument was advanced. Then necessarily we have to analyse as to what the Legislature intended to convey by employing the word 'such'.

15. In an endeavour to find out what exactly the meaning of the word 'such' in the common parlance, we turned to the New Oxfort Dictionary of English and we find that it gives the meaning as 'of the type previously mentioned'.
The Lexicon Webster Dictionary would explain the term 'such' as ' of the kind, character, degree, or extent of that or those indicated or implied.'
In legal parlance, the said term is understood as under according to Black's Law Dictionary,
"Of that kind, having particular quality or character specified. Identical with, being the same as what has been mentioned. Alike, similar, of the like kind. "Such" represents the object as already particularized in terms which are not mentioned, and is a descriptive and relative word, referring to the last antecedent."

16. Coming to the rulings of the Courts, we find that a Division Bench of Punjab High Court, way back in the year 1957 in the case reported in AIR 1957 Punjab 226 (I.T.Commissioner v. Jagan Nath) understood the word 'such' to mean 'to the last antecedent'. It is useful to refer to certain portion of the said ruling which reads as under,
"21. ... In its grammatical usage, and in its natural and ordinary sense, the word "such" is understood to refer to the last antecedent, unless the meaning of the sentence would thereby be impaired, which does not seem to be the case here. The word "such" indicates something just before specified, or spoken of, that is proximately, and not merely previously. It particularises the immediately preceding antecedent, and not everything that has gone before. It signifies what has preceded proximately and not just previously or formerly.
22. In Steinlein v. Halstead, 8 North Western Rep.881 (L), S.1697 of Revenue Statute, provided that:
"Within 10 days after the execution of the assignment the assignor shall also make and file in the office of said clerk a correct inventory of his assets and a list of his creditors, stating the place of residence of each such creditor and the amount due to each, which inventory and list shall each be verified by his oath, and have affixed a certificate of the assignee that the same is correct according to his best knowledge and belief, and failure to make and file such inventory and list shall render such assignment void, but no mistake therein shall invalidate such assignment or affect the right of any creditor."

The controversy in that case was in relation to the use of the word "such" in the sentences:
"and failure to make and file such inventory and list shall render such assignment void."
The Supreme Court of Winconsin held, that according to the natural, reasonable and grammatical construction, the word "such" referred only to a correct inventory of assets and list of creditors, without any reference whatever to the oath of the assignor or the certificate of the assignee. In other words it specified only the last preceding clause of the subject-matter."

In fact, the said ruling of the Punjab High Court was very much relied on by the learned single Judge of this Court in the ruling reported in AIR 1976 Madras 55 (cited supra) in understanding the meaning of the word 'such'.
17. In AIR 1980 Rajasthan 252 (Union of India v. Wazir Singh), a Division Bench of Rajasthan High Court while considering a case under Rajasthan High Court Rules, 1952, had occasion to consider how the word 'such' has to be understood. The Court pointed out the word ' such' referes to previously indicated, characterised or specified and that 'such' is an adjective, meaning the one previously indicated or refers only to something which has been said before.

18. A Constitution Bench of Supreme Court, while considering a case arising under Section 34 of Code of Civil Procedure, 1908 and Banking Regulation Act, 1949, had to examine the meaning of the word ' such' in (2002) 1 SCC 367 (Central Bank of India v. Ravindra). We extract hereunder what the Supreme Court observed,
"Webster defines "such" as "having the particular quality or character specified; certain; representing the object as already particularised in terms which are not mentioned". In New Webster's Dictionary and Thesaurus, meaning of "such" is given as "of a kind previously or about to be mentioned or implied; of the same quality as something just mentioned (used to avoid the repetition of one word twice in a sentence); of a degree or quantity stated or implicit; the same as something just mentioned (used to avoid repetition of one word twice in a sentence); that part of something just stated or about to be stated". Thus, generally speaking, the use of the word "such" as an adjective prefixed to a noun is indicative of the draftsman's intention that he is assigning the same meaning or characteristic to the noun as has been previously indicated or that he is referring to something which has been said before. This principle has all the more vigorous application when the two places employing the same expression, at the earlier place the expression having been defined or characterised and at the latter place having been qualified by use of the word "such", are situated in close proximity."

19. Thus in this case, applying the principles laid down by various courts, it could be seen, the words "such person" refer to a person referred earlier. The person referred earlier in Section 2(aa)(i) is one who contributes his own physical labour or that of any member of his family in cultivation of any land. Or in other words, Section 2(aa)(ii)(a) has to be understood as any person who contributes his own physical labour in the cultivation or that of any member of his family in the property in which he is in possession even after determination of tenancy agreement. If mere

possession is sufficient the Law makers would not have employed the word 'such' in Section 2(aa)(ii)(a). Can a person, who after the expiry of the lease period continues to be in possession, but runs a petty betelnut shop or an arrack shop instead of cultivating the land, claim the status of a cultivating tenant. The answer is emphatically 'No'. The Act is to protect only a cultivating tenant. Any interpretation has to be in consonant with justice and reason and should not be absurd.

20. We would like to refer to two rulings of Supreme Court at this juncture. In (2002) 4 SCC 105 (Bhatia International v. Bulk Trading S.A.) the Supreme Court pointed out that the Court while interpreting a statute should see to it that the interpretation should not result in inconvenience and absurdity. We quote hereunder the exact words employed by the Supreme Court.
"... A construction that results in hardship, serious inconvenience, injustice, absurdity or anomaly or which leads to inconsistency or uncertainty and friction in the system which should constitute purports to regulate as to be rejected and preference should be given to that construction which avoids such results. (See Johnson v. Moreton (19 78)3 All ER 37: and Stock v. Frank Jones (Tipton) Ltd. (1978) 1 All ER 948). In selecting out of different interpretations, the Court will adopt that which is just, reasonable and sensible rather than that which is none of those things, as it may be presumed that the legislature should have used the word in that interpretation which least offends our sense of justice. ..."

21. Subsequently also, the Supreme Court laid down to the same extent in (2002) 5 SCC 738 (Shashikant Singh v. Tarkeshwar Singh). In that case, the Supreme court observed as follows,
"That being the position, a reasonable and common sense approach deserves to be adopted and preferred rather than a construction that would lead to absurd results. ..."

22. Coming to the present case, second defendant has to plead and prove that even after determination of tenancy agreement he continues to be in possession and cultivating the land contributing his own physical labour. It would not be sufficient if he simply says that he is in possession. In the present case, second defendant has only pleaded in the written statement that he is a cultivating tenant. Nowhere he has stated that he is contributing his physical labour and cultivating the land. That apart, he has not whispered anything in that regard in his evidence also. Even the plea that he is entitled to the benefits of the Act has not been made.

23. Coming to the documents relied on by the respondent, it has to be remembered that admittedly the respondent has been in possession of more than 1/4 share in the suit property. That being so, these documents would not advance the case of the respondent moreso in the absence of necessary pleadings and oral evidence.
24. In these circumstances, it has to be held that second defendant is not a cultivating tenant as contemplated under Tamil Nadu Cultivating Tenants Protection Act, 1955. Once we come to such conclusion, then necessarily we have to declare that the plaintiff is entitled to a decree

for possession as well.

25. In the result, the appeal is allowed. There will be a
decree to the following effect,
(a) The suit property shall be divided as four equal shares with reference to
good and bad soil.
(b) On such division, plaintiff will be entitled to one such share.
(c) The plaintiff shall be put in possession of such share in the suit
properties.
(d) There will be no order as to costs.

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To

The Subordinate Judge, Dharapuram

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